IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4420 OF 2004

Shri Nareshchandra M.Rathod & Ors. ...Applicants

Versus

Mr.Palesh Jain @ Dhakad & Ors. ...Respondents

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Mr.Shirish Gupte, Sr.Counsel with Mr.Prakash Naik for Applicants.

Mr.H.H.Ponda for Respondents 1 and 2.

Mr.D.R.More, A.P.P. for Respondent No.3.

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**CORAM: A.M.KHANWILKAR, J.**

**NOVEMBER 23, 2004.**

**P.C.**

1. Heard Counsel for the parties.

2. The challenge in this Application is to the order passed by the Metropolitan Magistrate, 28th Court, Esplanade, Mumbai dated October 7, 2004 requiring the Applicants/complainants to produce the muddemal property in Court on 15th October

2004, which in turn, is to be handed over to the prosecution by preparation of list. Counsel for the Applicants contends that there is no difficulty in producing the muddemal property as and when required for the purposes of trial but requiring the Applicants to produce the same, so as to be made over to the prosecution is exposing the property to the risk of being tampered and especially when the property is a valuable property in the amount of over Rs.90,00,000/- (Rupees Ninety Lakhs). Reliance is placed on the decision of the Apex Court reported in **(2002) 10 SCC 283 in the case of Sunderbhai Ambalal Desai vs. State of Gujarat.**

3. Counsel for the Respondents 1 and 2 submits that the argument canvassed on behalf of the Applicants is misplaced, because now the charge has been framed and the case is ready for hearing. If it is so, production of muddemal property is imperative, having regard to the bond executed by the Applicants, while taking delivery of the said muddemal property under Court’s order.

4. Learned Counsel for Respondents 1 and 2 also contends that reliance placed on the decision of the Apex Court is misplaced because in that case, the question was entirely different and not the one which arises in the present case, where the case is set down for hearing and the property is required to be produced for the purpose of the trial.

5. Having considered the rival submissions, this Application will succeed only to the limited extend by setting aside the direction given by the Court below of handing over the property to the prosecution. In other words, I am not inclined to interfere with the direction given by the Trial Court requiring the Applicants/Complainant to produce the muddemal property in Court. The said property will have to be produced in Court, as the trial is already set down for hearing.

6. The Trial Court shall preserve the said property and if necessary, keep it in the treasury and make available only on the actual date of hearing as and when required. If it is not

possible fro the Trial Court to ensure compliance of this direction, then the Applicants be directed to produce the muddemal property in Court on fix date, at the time of hearing of the trial. This direction would dispose of the grievance made before this Court at the instance of the Applicants.

7. As mentioned earlier, the direction given by the Trial Court requiring the Applicant to produce the muddemal property in Court is not disturbed, but modified only to the limited extent as referred to above.

8. Application disposed of on the above terms.

9. All concerned to act on the ordinary copy of this order, duly authenticated by the Office.

A.M.KHANWILKAR, J.